Supreme Court, U.S.
FILED
AUG 31 1993
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1993

MARK GARRINGER,
Petitioner,

-v-

UNITED STEELWORKERS OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to
the United States Seventh Circuit
Court of Appeals

Petition for Writ of Certiorari

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5 H P

QUESTIONS PRESENTED FOR REVIEW

1. What constitutes the specifity and particularity required in a finding of (1) frivolous arguments, (2) false statements, and (3) improper tactics by an attorney.

2. Can a District Court sanction an attorney without identifying a factual basis for the sanctions.

3. Can a District Court award sanctions to a non-party without any right, title or interest to participate in the proceeding established for the record.

LIST OF PARTIES

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Respondent:

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OPINIONS BELOW

The opinion of the U.S. Seventh Circuit Court of Appeals in this matter on 6/4/93 is unpublished and reproduced in Appendix to this petition. The opinion of the U.S. District Court for the Southern District of Indiana ("District Court") in this matter on 7/24/92 is unpublished and reproduced in Appendix to this petition.

JURISDICTION

The opinion of the Court of Appeals was decided June 4, 1993. App. 1. No petition for rehearing was filed. The Petition for Writ of Certiorari is timely filed. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1252(1).

RULES INVOLVED

Rule 9011 of the Bankruptcy Rules of Procedure [in pertinent part]:

> The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation ... If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the representing party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fees.

28 U.S.C. §1927:

> An attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct.

STATEMENT OF THE CASE

The issue presented by this case concerns whether a District Court can sanction an attorney without a factual basis for the sanctions and award the sanctions to a non-party to the proceedings. This Petition demonstrates that the opinions below are a far departure from the accepted and usual course for this type of proceeding and that the lower courts have decided an important question which has not been, but should be settled, by this Court.

This proceeding was commenced by the Pension Benefit Guaranty Corporation ("the PBGC") in 1986 to terminate Pension Plan "A" of Continental Steel Corporation. Bankruptcy Court Entry at Appendix pages 15-23. The United Steelworkers of America ("the Union") moved to intervene in this proceeding. Id. The Union's

motion to intervene was never ruled on, apparently by oversight. Id. However, the Union was allowed to participate in this proceeding. Id.

The PBGC was appointed interim trustee of the Pension Plan in this matter and no further actions were taken by the court or the PBGC in the administration of the action.

In 1988, persons who were potential beneficiaries and participants of Pension Plan "A" moved to intervene. Id. The Union filed an objection to the motion to intervene on grounds that the Union held valid Powers of Attorney from the Plan participants, the Bankruptcy Court had approved the Union's motion to intervene, and the Union was the exclusive bargaining agent for the Plan participants. The Union had made clear that powers of attorney executed by some

of them in the bankruptcy proceeding had nothing to do with the pension plan litigation. Letter to H. Dean Bousum at App. 24-25. The Judge of the Bankruptcy Court wrote to a Plan participant to advise him that counsel for the Union represented the interests of Plan participants. Letter to Phil Kauble at App. 26.

On 4/12/88, the Bankruptcy Court stated:

> The Court has not authorized counsel for any of the potential beneficiaries of the pension benefits, if there are attorneys representing these people, they certainly haven't surfaced to my memory in any phase of this case. They are free to retain counsel, as is any person ...

Bankruptcy Court Entry at App. 18.

There was no further activity in this proceeding until 9/8/90, when the undersigned Petitioner, Mark Garringer (hereinafter "Garringer"), entered his Appearance on behalf of 128 Plan participants who had moved to intervene in 1988. The

Appearance referenced 128 Powers of Attorney executed by Plan participants in the record and the statement by the Bankruptcy Court that the Plan participants were entitled to retain counsel "as is any person". App. 18.

The Bankruptcy Court struck Garringer's Appearance. App. 22. Garringer appealed this decision to the District Court as to the striking of the Appearance only. The appeal asserted that Garringer's clients are "Plan participants" who are "interested parties" to the proceeding pursuant to the plain meaning of the law. 29 U.S.C. §1342(d)(2)9B). The appeal asserted that Garringer's clients are "parties" to the proceeding as their interests are being litigated. Shields v. Howard, 17 Howard 130, 139: 15 L.Ed 158, 160. Garringer argued that his clients had a fundamental right to be heard where their interests

are being litigated. Goldberg v. Kelly, 397 U.S. 254, 270-271, 25 L.Ed.2d 287, 90 S.Ct. 1011.

The appeal questioned the "exclusive bargaining agency" of the Union in this matter, since the Plan participants had no expectation of returning to work, there was no employer, no bargaining agreement, and the Union's Locals had been long since extinguished by terminal trusteeship reports filed by the Union with the Department of Labor. Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass, 404 U.S. 157, 172, 30 L.Ed.2d 341, 92 S.Ct. 383.

No party, court, or tribunal has addressed the issues raised by Garringer in the appeal to the District Court by rendering a statement reduced to writing for the record. The Union filed a Motion for Sanctions for (1) frivolous arguments

on the appeal, (2) false and unsupported factual statements and (3) engaging in improper tactics and wrongfully causing multiplication of litigation. App. 7. No frivolous argument in Garringer's appeal brief was cited by the Union as foundation for the motion for sanctions. No false or unsupported factual statement in Garringer's appeal brief was cited by the Union. As to the engaging in improper tactics and vexatious multiple litigation, the Union cited a motion to withdraw the plan termination proceeding to the District Court.

The District Court imposed sanctions against Garringer that was awarded to the Union. App 14. The District Court failed to identify a frivolous argument, or false or unsupported factual statement made by Garringer in the appeal of the striking of his appearance to the District

Court. Id. The District Court failed to identify any improper tactic or multiple vexatious litigation made by Garringer as foundation for the sanctions.

REASONS WHY THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

This petition addresses substantial departures by the lower courts from the accepted and usual course of proceedings. This petition presents an important question concerning the impact of the substantial departures on members of the public. Finally, this petition demonstrates that Garringer is entitled to farther relief in this proceeding.

I

THE DECISIONS OF THE LOWER COURTS ARE A FAR DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF PROCEEDINGS

The Union made a motion to intervene in this proceeding that was never ruled on,

"apparently by oversight". App. 17. As such, the Union is a proposed intervenor and total stranger to this action. There is nothing in the record to reflect what right, title or interest the Union has to participate in this proceeding. It is a fundament of American law that relief cannot be granted to a complainant who has no title or interest in the subject matter of the controversy. Selz v. Unna, 6 Wall 327. Thus, awarding sanctions to the Union, a total stranger to the action, is a far departure from the usual business of the courts. Parties prosecuting a title must show some real interest to be protected. McMicken v. United States, 97 U.S. 204, 24 L.Ed 947. For purpose of administering justice courts determine who are real parties to a suit by referring not merely by the names in which it is brought but to the facts of the case as

they appear on the record. United States v. Beebe, 127 U.S. 338, 8 S.Ct. 1083, 32 L.Ed 121. Likewise, an intervenor's interest must be direct and calculated to suffer loss or gain by judgment. Smith v. Gale, 144 U.S. 509, 12 S.Ct. 674, 36 L.Ed 521.

In 1988, the Union asserted in Objection to Motion to Intervene by Plan participants, who later retained Garringer, that the Bankruptcy Court had approved the motion to intervene by the Union. The failure of the Bankruptcy Court to reduce this approval of the Union's motion to intervene to a writing for the record remains a far departure from the usual course of business of the courts. The Union asserted powers of attorney from the Plan participants in the objection to motion to intervene. The courts failed to require the Union to produce these powers

of attorney for the public record in a far departure from the usual course of business of the courts. Rule 9010(c) of the Bankruptcy Rules of Procedure.

The Bankruptcy Court advised the Plan participants who retained Garringer, for the record, that they could retain counsel "as any person" [App. 18.] then struck the appearance of counsel retained by these persons in a far departure from the plain meaning of the court's words.

There was a "finding of fact" that the counsel who filed a motion to intervene for the Plan participants withdrew the motion to intervene without a statement in the record to that effect. App. 6. This is a far departure from the usual business routine of appearance and withdrawals of attorneys. There was a "settlement" of this matter in 1988 that is not reflected in the record of this

proceeding that is executed by the parties and approved by the court after it is reduced to writing. Id. This is a far departure from the usual business routine of the courts.

Finally, the District Court awarded sanctions to the Union without identifying (1) a frivolous argument, (2) a false and unsupported-factual statement, or (3) improper tactics or multiple vexatious litigation in a far departure from the usual business routine of the court. The substance of the District Court's opinion:

> We find that in light of these warnings and the complete lack of merit in Mr. Garringer's appeal, sanctions are appropriate under either Bankruptcy Rule 9011 or 28 U.S.C. §1927. Throughout these proceedings it is apparent that Mr. Garringer acted with reckless disregard of the requirement that arguments before this Court be grounded in fact and warranted by law. Moreover, it is clear that the appellants' attorney has unreasonably multiplied these proceedings for no apparent reason, other than to perhaps harass the appellees. App. 13-14.

These is no elaboration by the District Court of any particulars. As such, it is mere speculation where proofs fail. In Re: Sawyer, 360 U.S. 622, 628, 3 L.Ed.2d 1473, 1479, 79 S.Ct. 1376 (1959).

In the appeal brief to the U.S. Seventh Circuit Court of Appeals, Garringer challenged the Union and the Circuit Court to put their finger on a particular frivolous argument or false factual statement made by Garringer that would warrant sanctions in this matter. The Union and the Circuit Court declined to do so. App. 1-2. The Union now has an opportunity on this Petition for Writ of Certiorari, by way of Respondent's Brief in Opposition, to point to a particular frivolous argument or false factual statement made by Garringer in his appeal to the District Court. As it stands, all that is contained in the record are mere

conclusory statements that Garringer has made frivolous arguments, false factual statements and improper litigation in mere conclusory statements without a whiff of record in support in a far departure from the usual business routine of the courts.

II

THERE IS AN IMPORTANT QUESTION AS TO WHAT CONSTITUTES SANCTIONABLE ACTIVITY BY AN ATTORNEY WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS Court

There has been a dramatic increase by the federal courts in imposing sanctions on attorneys. Rule 9011 of the Bankruptcy Rules, identical to Rule 11 of the Federal Rules of Civil Procedure, and 28 U.S.C. §1927 are recent rules designed to deter improper conduct by attorneys and reduce frivolous litigation before the courts. In regards to these recent rules, the federal courts are in desperate need of guidance from this Court in the form of a

conclusive decision concerning what constitutes frivolous arguments, false statements and improper tactics that would warrant imposing sanctions on an attorney. In Pavlic & LeFlore v. Marvel Comics Group, 493 U.S. 120, 123, 107 L.Ed.2d 438, 110 S.Ct. 456 (1989), this Court determined that the Rules must be given a "plain meaning". However, there is no guidance by the Court as to what constitutes sufficient record to establish for the record that the Rules are being given their plain meaning. More conclusory statements of frivolous argument and false allegations are not enough for the record to establish that the courts are giving the Rules their plain meaning. It is the duty of the Supreme Court to establish guidelines to make clear that the United States is run by the rules of law and not the whim of despots. Marbury v. Madison,

1 Cranch 137, 2 L.Ed 60 (1803).

The United States General Accounting Office predicts that over 1.2 million bankruptcies will be filed in 1993. "BANKRUPTCY TRUSTEES, Oversight Improved, But Extent of Trustee Fraud is Unknown", GAO/GGD-83-54, January 1993. This is millions of creditors and persons affected by bankruptcy filings each year. In large bankruptcies, there are creditors committees and entities representing classes of persons and their interests beyond the purview of class-action rules. If the decision of the lower courts is allowed to stand in this matter, the bankruptcy courts are in jeopardy of becoming the exclusive fiefdoms of bankruptcy lawyers and their associates. That is because no traditional lawyer, such as Garringer, can come to the courthouse armed with powers of attorney executed by his clients

and the laws of the United States to defend the interests of his clients without apprehension and fear of unwarranted sanctions for attempting to establish who represents whom[1]. App. 4-5.

The result is millions of persons who are deprived of their right to be heard while their interests are being litigated in federal courts, since the right to be heard is of little avail if it does not comprehend the right to be heard by counsel. Goldberg v. Kelly, 397 U.S. 254, 270-271, 25 L.Ed.2d 287, 90 S.Ct. 1011.

A decision by this Court establishing the prerequisites and sufficiency of record in this matter to sustain a rational decision pursuant to Rule is necessary to preserve the purpose and

Footnote[1]. In this matter, what we have is a determination that maybe the Union represented the Plan participants and maybe it did not in settlements that are absent from the record in this proceeding.

intent of the Rules to deter improper conduct by attorneys and frivolous litigation. A lawyer cannot forebear from future frivolous litigation when he is not instructed fully of his improper conduct and what it was. Instead of less litigation and burdens for the courts, there will ultimately be more litigation and a perception by the public of arbitrary actions by the judiciary.

III

THE PETITIONER IS ENTITLED TO KNOW WHAT HE IS BEING SANCTIONED FOR

Facts in the form of undeniable concrete truths accepted by all reasonable persons and laws enacted by Congress and promulgated by the courts, are the business of the courts and attorneys. Garringer knows that he is sanctioned for (1) frivolous arguments, (2) false factual statements and, (3) improper tactics.

However, Garringer is unaware of any frivolous argument he has made and authority in the law for this frivolity. Garringer is unaware of any particular false factual statement he has made and the foundations in truth that would lead any reasonable person to rationalize the falsity of the statement. Garringer has begged the Union and the lower courts to tell him, but they have forebeared from doing so. Garringer has a fundamental right afforded by the due process clause of the Fifth Amendment of the Constitution to know what he is accused of and what he is convicted of in particulars and specificity. In an analogy to criminal law, it is improper to incarcerate a person on general allegations that he robs banks and he is always robbing banks. The specificity on one bank robbed by the accused at a certain time and place is a

necessary prerequisite to incarceration. Garringer is being deprived of this precept of law.

PRECISE RELIEF REQUESTED

The Petitioner respectfully prays for this Court to grant this Petition for Writ of Certiorari, and,

1. For this Court to consider the question as to what constitutes sufficient specificity and particularity of record in sanctioning an attorney for frivolous argument, false statement and improper tactics.

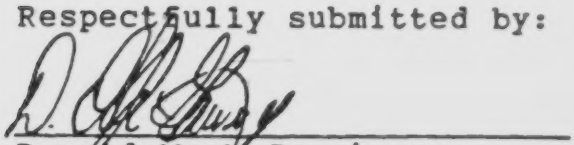
2. Identification of particular frivolous arguments, false statements, and improper tactics that would substantiate the sanctions imposed as warranted.

3. For this Court to consider the question of whether it is proper to award sanctions to a non-party with no apparent right, title or interest in the outcome of

the matter of the controversy established for the record.

4. Such other and further relief as proper in the premises.

Respectfully submitted by:



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APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

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App. 1

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

June 4, 1993

Before

Hon. Joel M. Flaum, Circuit Judge

Hon. Daniel A. Manion, Circiut Judge

Hon. Milton I. Shadur, District Judge*

IN THE MATTER OF:	)	Appeal from the
CONTINENTAL STEEL	)	United States
CORPORATION, formerly	)	District Court for
known as PENN-DIXIE,	)	the Southern
STEEL CORPORATION,	)	District of
formerly known as	)	Indiana,
PENN-DIXIE	)	Indianapolis
INDUSTRIES, INC.	)	Division.
Debtor,	)	
APPEAL OF:	)	No. 90 C 2190
MARK GARRINGER	)	
	)	S. Hugh Dillin,
No. 93-1074	)	Judge.

This matter comes before the court for its consideration of the following documents:

1. SUGGESTION FOR AFFIRMANCE WITHOUT ORAL ARGUMENT construed as a motion for summary affirmance filed herein

on 3/26/93, by counsel for the appellee United Steelworkers of America.

2. REASONS WHY ORAL ARGUMENT IS NECESSARY filed herein on 4/6/93, by the pro se appellant.

On consideration thereof,

IT IS ORDERED that said motion is GRANTED and the judgment of the district court is SUMMARILY AFFIRMED. See Mather v Village of Mundelein, 869 F.2d 356, 357 (7th Cir 1989).

* The Hon. Milton I. Shadur, District Judge for the United States District Court for the Northern District, of Illinois, Eastern Division is sitting by designation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PHIL KAUBLE, et al., Appellants, -vs- UNITED STEELWORKERS OF AMERICA, Appellees,	)	Cause No. IP93-2190-C
IN RE: CONTINENTAL STEEL CORP., f/k/a PENN-DIXIE STEEL CORPORATION, f/k/a PENN-DIXIE INDUSTRIES, INC. Debtor,	)	Bankruptsy Case No. IP85-5415-V
PENSION BENEFIT GUARANTY CORPORATION, Petitioner, -vs- CONTINENTAL STEEL CORPORATION, Respondent.	)	A.P. No. 86-141

ENTRY

This cause comes before the Court on appellee United Steelworkers of America's motion for sanctions pursuant to Bankruptcy Rule 9011 and 28 U.S.C. §1927. For the following reasons, the motion is granted in part and denied in part.

Background

Phil Kauble and the other plaintiffs are past employees of Continental Steel Corporation (Continental) and past members of defendant United Steelworkers of America (Union). On November 8, 1990, the appellants' present attorney Mark Garringer, filed an appearance in AP 86-141 on behalf of several unnamed wage and benefits claimants, and at the same time filed a motion to compel discovery. Judge Vandivier of the Bankruptcy Court struck both Garringer's appearance and the motion to compel on November 14, 1990.

The appellants appealed and in September 23, 1991, we affirmed.

The substance of our decision was as follows:

> The Bankruptcy Court denied Garringer's appearance because [1] "his clients are not parties.. and cannot be made parties simply by appearing, and [2] "Any interest his clients had in this case has been finally adjudicated and intervention at this point would appear to be without purpose." The Bankruptcy Court denied the motion to compel for [1] lack of standing, and [2] because it was premature as no discovery request had been tendered.
>
> It is clear that the present appellants are not parties to AP 86-141, since AP 86-141 is PBGC's action against Continental. As such, to become a part of this proceeding intervention is required. However, if appellants were represented by the Union in AP 86-141, then they have already intervened and their interests were represented. Thus, the appellants are estopped from asserting , two years after settlement, some new position with new counsel
>
> If, on the other hand, the appellants were not represented by the Union, they have waived any interest they might have had in the proceeding. Simply put, appellants intervention, two years after settlement, is untimely and will

not be allowed. See Bankruptcy Rule 7024 (incorporating Rule 24, Fed.R.Civ. P. and requiring timely intervention.

The appellants contend that their Feb. 1, 1988, motion to intervene was never withdrawn. Thus, they argue that their motion to intervene is still pending. However, whether the appellants' previous counsel withdrew their motion is a finding of fact and must be upheld unless it is clearly erroneous. Since no evidence, such as, affidavits from previous counsel, has been submitted to contradict the Bankruptcy Court's finding, we will uphold it. In any event, even if appellants' former counsel had not withdrawn their motion to intervene, any interest which the appellants may have had has been waived because it is beyond dispute that their counsel were present at the settlement and failed to speak against it. In fact, it can be inferred that the appellants' previous counsel thought, as this Court does now, that the settlement is in the best appellants' best interest

The appellants have raised numerous other arguments on appeal. However, they are not pertinent as to whether attorney Garringer may be allowed to enter an appearance in this action. As discussed above, this is not procedurally acceptable. Accordingly, the Bankruptcy Court's Entry striking the appearance of Garringer and denying the motion to compel discovery is affirmed.

A notice of appeal to the Seventh Circuit Court of Appeals was filed in this action on October 9, 1991.

On December 19, 1991, the appellee filed a motion for sanctions in this Court. The appellee requests sanctions against one of the appellants, Phil Kauble, and the appellants' attorney Mark Garringer. The appellee contends that sanctions are appropriate for the making of [1] frivolous arguments, and [2] false and unsupported factual statements and accusations. In addition, the appellee believes that Garringer and Kauble have engaged in improper tactics and wrongfully caused a multiplication of litigation.

On July 10, 1992, this Court's order was affirmed by the Seventh Circuit Court of Appeals.

Discussion

The appellee brings this motion for sanctions on two grounds, Bankruptcy Rule 9011 (essentially identical to Rule 11, Fed.R.Civ.Pro.) and 28 U.S.C. §1927.

Bankruptcy Rule 9011 provides in relevant part that an attorney must verify that:

> [a document] is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification,or reversal of existing law; and that it is not interposed for any improper purpose, such as, to harass, to cause delay, or to increase the cost of litigation ... If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the representative party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney's fees.

We note that Rule 9011 applies to documents filed in District Court, see In re

Roete, 936 F.2d 963, 966 (7th Cir. 1991), and that we have jurisdiction to consider a motion for sanctions despite the filing of an appeal, where such motion is collateral to the merits of a dispute. Krull v. Celotex Corp., 827 F.2d 80 (7th Cir. 1987); Pfatzer v. Board of Regents of University of Wisconsin System, 763 F.2d 851 (7th Cir. 1985); accord Bygott v. Leaseway Transportation Corporation, 637 F.Supp. 1433, 1438 (E.D. Pa. 1986); Ezell v. Lincoln Elec. Co., 119 F.R.D. 645, aff'd 863 F.2d 880 (S.D. Miss. 1988) (district court retained jurisdiction to impose Rule 11 sanction even though notice of appeal was filed prior to filing of motion for sanctions); Lapin v. U.S., 118 F.R.D. 632 (D.Hawaii 1987) (Litigant's filing of notice of appeal did not deprive district court of juris-

diction over question of whether Rule 11 sanctions were appropriate). In addition, the appellee's motion for sanctions under Rule 9011 is timely as it was filed within 90 days of the final judgment in this action. Kaplan v. Zenner, 1992 WL 18265, No. 90-2234 (7th Cir. February 6, 1992) ("Szabo will define the outer parameters of the timeliness for sanctions claims"); Szabo Food Service. Inc. v. Canteen Corp, 823 F.2d 1073, 1080 (7th Cir. 1987)(sanctions under Rule 11, Fed.R.Civ.Pro., may be filed after final judgment within the time provide under local rules for the filing of request for attorney's fees); Local Rule 54.1, S.Dist.Ind (1992)(motion for attorney's fees may be filed within 90 days of judgment).

The appellee's second basis for sanctions is U.S.C. §1927. This section is

applicable to bankruptcy appeals. See Matter of Sherk, 918 F.2d 1170, 1178 (5th Cir. 1990). Section 1927 provides that:

> Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct.

In order for a court to impose sanctions under §1927, it must find that Mr. Garringer acted recklessly or in bad faith - the same standard for sanctions under a court's inherent power. "Before a court may assess fees under §1927, the attorney must intentionally file or prosecute a claim that lacks a plausible legal or factual basis." Indianapolis Colts v. Mayor and City Council of Baltimore, 775 F.2d 177, 182 (7th Cir.1985).

In the course of this proceeding, at

least two warnings have been issued to appellants' counsel against the making of unfounded accusations and frivolous arguments. First, Judge Vandivier in his order of November 14, 1990, striking the appearance of Garringer and the motion to compel discovery, noted that:

> The Court advises Mr. Garringer that before filing a motion to intervene, or any other pleading in this bankruptcy case, that he has the duty to ascertain that the pleading be well grounded in fact and warranted by existing law or a good faith extension, modification or reversal of existing law, and that such pleadings may not be interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation. See Bankruptcy Rule 9011.

Second, in response to appellants' motion to withdraw the present adversary proceeding from reference to the Bankrutcy Court, Judge Steckler, in denying the motion, stated on December 14, 1990, that:

> Additionally, counsel for Kauble is forewarned that the Court will not countenance baseless speculation regarding alleged improprieties by officers of the court. If counsel has evidence that officers of the bankruptcy court have mishandled funds then counsel has an obligation to bring such evidence forward immediately; otherwise, counsel is well-advised to refrain from alleging -- expressly or otherwise -- that "judicial officers of the Bankruptcy Court" have allegedly "div[vied] up the booty with their cronies."

We find that in light of these warnings and the complete lack of merit in Mr. Garringer's appeal, sanctions are appropriate under either Bankruptcy Rule 9011 or 28 U.S.C. §1927. Throughout these proceedings it is apparent that Mr. Garringer acted with reckless disregard of the requirement that arguments before this Court be grounded in fact and warranted by existing law. Moreover, it is clear that the appellants' attorney has unreasonably multiplied these pro-

ceedings for no apparent reason, other than to perhaps harass the appellees.

After careful consideration, we believe that sanctions in the amount of $1500 are warranted in this cause against the appellants' attorney Mark Garringer. However, unlike the appellee, we do not believe that sanctions are appropriate as to Mr. Kauble. The nature of the sanctionable conduct is in the advocacy and is not based on the conduct of Mr. Kauble.

Accordingly, the appellee's motion for sanctions is granted in part and denied in part.

Dated this 24th day of July, 1992.

UNITED STATE BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:	)	BANKRUPTCY NO.
	)	IP85-5415-RWV-7
CONTINENTAL STEEL CORPORATION, f/k/a PENN-DIXIE STEEL CORPORATION and PENN-DIXIE INDUSTRIES, INC.,	)	
Debtor.	)	
PENSION BENEFIT GUARANTY CORPORATION	)	Adversary Proceeding No. 86-141
Applicant,	)	
vs.	)	
CONTINENTAL STEEL CORPORATION, Plan Administrator of the Continental Steel Corporation 1950 Employees Pension Plan A,	)	
Respondent.	)	

ENTRY STRIKING APPEARANCE AND MOTION TO COMPEL DISCOVERY AND ORDER FOR PLAINTIFF TO PROCEED

This matter comes before the Court on the Appearance and the motion to Compel

Discovery, both filed on November 8, 1990, by Mark Garringer on behalf of Phil Kauble and certain other unnamed wage and benefit claimants ("the claimants"). The Court strikes these filings for the reasons below.

1. The adversary proceeding began in the district court on February 14, 1986, when the Pension Benefits Guaranty Corporation ("the PBGC") brought suit against the Debtor under ERISA to terminate certain of the Debtor's underfunded pension plans. The district court referred this matter to this Court because of the Debtor's pending bankruptcy. There are, however, no bankruptcy issues presented in the case.

2. The matters presented in the adversary proceeding were fully resolved by agreement, and the Court made no ruling on any substantive issue, save ap-

proving the settlement. The parties early on agreed that the plans should be terminated, but settlement of the issue of the termination date took extensive negotiations. The Court approved the final settlement after a hearing on March 10, 1988, which was noticed to all creditors.

3. The United Steel Workers and two of its locals (together "the Union"), on behalf of participants and beneficiaries of one of the plans, by counsel representing the Union, moved to intervene on February 19, 1986. Though there was no formal ruling on this motion (apparently by oversight, since there was no objection to intervention), the Union was permitted to participate in the proceedings. Some individual employees and beneficiaries, including Mr. Kauble and other of Mr. Garringer's clients, moved

to intervene on February 1, 1988, but counsel then representing them withdrew the motion at hearing of March 10, 1988.

4. Since the controversy has been settled, the case has long been ready to be closed, presumably by an agreed dismissal by the parties. The parties, however, have neglected to take action which would allow the Court to formally close the case.

5. Mr. Garringer cites as a basis for his appearance this remark by the Court in an April 12, 1989, hearing: "The Court has not authorized counsel for any of the potential beneficiaries of the pension benefits. If there are attorneys representing these people, they certainly haven't surfaced to my memory in any phase of this case. They are free to retain counsel, as is any person ..." Mr. Garringer purports to be "surfacing"

now.

6. The hearing Mr. Garringer refers to was in the bankruptcy case itself, not in this adversary proceeding, and the issue at that hearing was not the termination of the pension plans, but the subsequent global settlement of the major claims against the estate. Thus, even if this statement can be interpreted as giving Mr. Garringer's clients a right to appear in the bankruptcy case itself (which some of his clients have indeed done), it does not confer a right to intervene in the many separate adversary proceeding associated with this case. His clients are not parties in this proceeding and cannot be made parties simply by appearing. The proper avenue for his clients would be to move to intervene under Bankruptcy Rule 7024, alleging and demonstrating the right to

intervene. His clients are indeed free to retain counsel, but the counsel they retain is not excused from complying with the rule that are essential to the orderly administration of the estate. Because the appearance of Mr. Garringer and his clients have not complied with the requirements of these rules, it will be stricken.

7. Even if Mr. Garringer had filed a motion to intervene rather than an appearance, the Court cannot imagine any possible grounds for intervention at this point in this case, which was resolved by a settlement that has been final and nonappealable for two and a half years. Any interest his clients had in this case has been finally adjudicated and intervention at this point would appear to be without purpose. The Court advises Mr. Garringer that before filing

a motion to intervene, or any other pleading in this bankruptcy case, that he has the duty to ascertain that the pleading is well grounded in fact and warranted by existing law or good faith argument for the extension, modification or reversal of existing law, and that such pleadings may not be interposed for any improper purpose, such as to harass, to cause delay, or to increase the cost of litigation. See Bankruptcy Rule 9011.

8. Because Mr. Garringer's clients are not parties to this proceeding, they have no standing to file their Motion to Compel Discovery. Additionally, even if these claimants were parties, the motion is procedurally defective. A motion to compel is appropriate only after a discovery request has been made and the other party has failed to respond. See Bankruptcy Rule 7027, incorporating Rule

37(a)(2) of the Federal Rules of Civil Procedure. Thus, a motion to compel may not be filed with the discovery request, and Mr. Garringer's motion is premature, even assuming his clients' standing. Therefore, the motion will be stricken.

9. The Plaintiff has taken no formal action in this case since 1988. Although the matter has been settled to the parties' satisfaction, the Court still needs to formally close the case. The Court will therefore order the Plaintiff to proceed within the 14 days of this order by taking appropriate action to advance this case to closing, or this Court will dismiss the case for want of prosecution.

The Court therefore:

1. STRIKES the Appearance and Motion to Compel Discovery filed by Mr. Garringer on November 8, 1990, and

2. ORDERS the Plaintiff to proceed within 14 days of this order, or this case will be dismissed for want or prosecution.

BAMBERGER & FEIBLEMAN

LAWYERS

500 UNION FEDERAL BUILDING

45 NORTH PENNSYLVANIA STREET

INDIANAPOLIS, INDIANA 46204

May 18, 1987

H. Dean Bousum
821 West Woodland
Kokomo, Indiana 46902

Dear Mr. Bousum:

In reply to your letter of May 14, 1987, please be advised that the Power of Attorney which gave authority to the Union to enter into the Settlement Agreement is not connected to the Rule of 65 matter.

The Power of Attorney authorizes the Union to enter into the agreement with the Bankruptcy Trustee which will allow a part of your claims agains (sic) the company to be paid.

Your right to receive early shutdown benefit under the Rule of 65 is separate and apart from that settlement. Further, the Pension Benefit Guaranty Corporation is a party to the Settlement Agreement and has made no requirement that the settlement take away your Rule of 65 pension plan.

In fact, at a post-hearing conference in our lawsuit with the PBGC regarding the Rule of 65, the parties indicated to Judge Vandivier that there was no way to settle the Rule of 65 case and that it would be necessary that he render his opinion in order to allow the parties to move forward.

Accordingly, your completion of the Power of Attorney giving authority to the Union to enter into the Settlement Agreement with the Bankruptcy Trustee is not related to the Rule of 65 case nor does entering into the settlement waive or otherwise give away your early retirement pension.

If you have any further questions regarding this matter, please do not hesitate to contact us.

Very truly yours,

BAMBERGER & FEIBLEMAN

By Paul T. Deignan

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

COURT OF BANKRUPTCY

U.S. COURTHOUSE

INDIANAPOLIS, INDIANA 46204

April 25, 1988

Mr. Phil Kauble
Pension Rights Committee Spokesman
1024 S. McCann Street
Kokomo, IN 46902

RE: Continental Steel Corporation
IP85-5415 V

Dear Mr. Kauble:

This is to acknowledge receipt of your correspondence dated April 22, 1988, regarding the above-captioned bankruptcy case.

Your letter had (sic) been referred to Paul Deignan, an attorney who represented the interests of pension recipients, with the request that he reply to you.

Yours sincerely,

By Richard W. Vandivier
Bankruptcy Judge

cc: Paul Deignan
BAMBERGER & FEIBLEMAN